

MAR 11 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO ISABEL ROMERO,

Defendant - Appellant.

No. 07-30147

D.C. No. CR-06-00023-1-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted February 26, 2008^{**}

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Francisco Isabel Romero appeals from his 144-month sentence imposed for possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B), possession with intent to distribute methamphetamine in

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A), and bringing in and harboring illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii). We have jurisdiction pursuant to 28 U.S.C. §1291. We vacate and remand.

Romero contends that the district court improperly relied on his citizenship, multi-cultural background and bilingual ability during sentencing and that the district court had no basis for concluding that “statistically, he’s the kind of person that would engage in this kind of conduct in the future.” We conclude that the district court abused its discretion by considering Romero’s race and national origin in contravention of U.S.S.G § 5H1.10, which states that such factors are not relevant in the determination of a sentence. We further conclude that the district court erred by relying on unfounded assumptions as to Romero’s statistical likelihood of recidivism. *See Gall v. United States*, 128 S. Ct. 586, 597 (2007); *see also United States v. Borrero-Isaza*, 887 F.2d 1349, 1352 (9th Cir. 1989) (concluding that the district court may not consider improper, inaccurate or mistaken information, and may not make unfounded assumptions in imposing sentence).

VACATED AND REMANDED.